2373.

SUPREME COURT OF THE UNITED STATES.

No. 179.

WILLIAM C. BEVINS, &c., WHO SUE FOR OLIVER P. EARLE, APPELLANTS,

vs.

WILLIAM B. A. RAMSEY AND AL.

APPEAL FROM CIRCUIT COURT UNITED STATES FOR TENNESSEE.

INDEX.

	Original.	Print.
Summons	1	2
Bond	2	2
Marshal's return	3	3
Declaration	3	3
Copy of bond referred to in declaration	12	9
Defendant's pleas	14	10
Replication to defendant's pleas	22	14
Rejoinder to replication	24	15
Issues joined	25	16
Judgment	26	16
Appeal prayed and allowed	27	17
Appeal bond	27	17
Clerk's certificate	28	18

Be it remembered, that on the 18th day of September, 1847, a summons was issued from the office of the clerk of the United States court, for the eighth judicial circuit, in the district of East Tennessee, at the suit of Bevins, Earle & Co., who sued for the use of O. P. Earle, against William B. A. Ramsey et al., in the words and figures following, to wit:

The President of the United States, to the marshal of East Tennessee district, greeting:

You are hereby commanded to summon William B. A. Ramsey, Robert Craighead, James P. N. Craighead, Thomas W. Humes, and James McMillan, administrator of Andrew McMillan, deceased, citizens of the State of Tennessee, and residents in the district of East Tennessee aforesaid, to appear before the judges of the court of the United States, for the eighth circuit, in the district of East Tennessee, at the the court-house in Knoxville, on the third Monday of October next, to answer William C. Bevins, a citizen of the State of Arkansas, and Oliver P. Earle, a citizen of the State of South Carolina, surviving partners of the late firm of Bevins, Earle & Co., assignees of Aaron V. Brown, Governor of the State of Tennessee, successor of James C. Jones, who was successor of James K. Polk, who was successor of Newton Cannon, who sue for the use of Oliver P. Earle, a citizen of the State of South Carolina, of a plea that they render to them ten thousand dollars, which to them, the said William B. A. Ramsey, Robert Craighead, James P. N. Craighead, and Thomas W. Humes, owe, and which they, together with the said James McMillan, as administrator as aforesaid, from them unjustly detain, to their damage twenty thousand dollars, and have you then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the third Monday of April, 1847, and year of the independence of the United States.

JAMES W. CAMPBELL, *Clerk*.

Bond.

District of East Tennessee.

Know all men by these presents, that we, Oliver P. Earle and George Jones are jointly and severally held, and firmly bound, unto William B. A. Ramsey, Robert Craighead, James P. N. Craighead, Thomas W. Humes, and James McMillan, administrator of Andrew McMillan, deceased, in the penal sum of five hundred dollars, to be void on condition that William C. Bevins and Oliver P. Earle, who sue for the use of the said Oliver P. Earle, do with effect prosecute a suit by them this day commenced in the court of the United States for the eighth circuit, in the district of East Tennessee, against the said W. B. A. Ramsey, Robert Craighead, James P. N. Craighead, Thomas W. Humes, and James McMillan, as administrator as afore-

said, otherwise pay and satisfy all costs and damages which may be awarded for failure therein.

Witness our hands and seals this 18th day of September, 1847.

O. P. EARLE. [SEAL]
By Hinds, his attor.
G. JONES. [SEAL.]

On the back of which said summons the following endorsements are made, to wit, No. William C. Bevins and O. P. Earle, assignees, who sue for O. P. Earle's use, vs. William B. A. Ramsey, Robert Craighead, J. P. N. Craighead, Thomas W. Humes, and James McMillan, adm., &c. Debt $10,000, damages $20,000; issued 18th September, 1847. To October term, 1847. Came to hand 21st of Sept., 1847. Arth. R. Crozier, U. S M., dist. of E. T. I acknowledge service of this writ, Sept. 20th, 1847, W. B. A. Ramsey. Executed on defendants, Robt. Craighead and J. P. N. Craighead, Sept. 21st 1847, and on Thomas W. Humes and James McMillan, adm., on the 22d of Sept., 1847. Defendant W. B. A. Ramsey not found in my district.

ARTHUR R. CROZIER,
U. S. marshal, dist. E. T.

Marshal's fees $8.

And afterwards, to wit, at the June rules, 1848, of said court, the following declaration was filed in said cause, viz.:

UNITED STATES OF AMERICA, *district of East Tennessee.*

Eighth judicial circuit *circuit* court, June rules, 1848.

William C. Bevins, a citizen of the State of Arkansas, and Oliver P. Earle, a citizen of the State of South Carolina, surviving partners of the firm of Bevins, Earle & Co., assignees of Aaron V. Brown, Governor of the State of Tennessee, successor of James C. Jones, late Governor, who was successor of James K. Polk, who was successor of Newton Cannon, who sue for the use of Oliver P. Earle, a citizen of the State of South Carolina, by attorney complains of William B. A. Ramsey, Robert Craighead, James P. N. Craighead, Thomas W. Humes, and James McMillan, administrator of Andrew McMillan, deceased, citizens of the State of Tennessee, and resident in the district aforesaid, who have been duly summoned by the marshal, and of a plea that they render to them the sum of ten thousand dollars, which to them, the said William B. A. Ramsey, Robert Craighead, James P. N. Craighead, and Thomas W. Humes, owe, and which they, together with the said James McMillan, as administrator as aforesaid, from them unjustly detain. For that whereas the said defendant William B. A. Ramsey, at the April term, 1836, of the court of chancery holden at Knoxville, for the sixth chancery district of the eastern division of Tennessee, was appointed clerk and master of said chancery court; and thereupon the said William B. A. Ramsey, Robert Craighead, James

P. N. Craighead, Thomas W. Humes, and a certain Andrew McMillan, since deceased, on the 11th day of April, 1836, at Knoxville, to wit, in the district aforesaid, made, executed, and delivered to the said Newton Cannon, then governor in and over the State of Tennessee, and his successors in office, their certain bond or writing obligatory, sealed with their respective seals, and subscribed with their own proper signatures respectively, and which said bond was acknowledged in open court before the honorable Thomas L. Williams, chancellor, by the said William B. A. Ramsey, Robert Craighead, James P. N. Graighead, Thomas W. Humes, and the said Andrew McMillan, and recorded on the records of said court, a copy of which said bond the said plaintiffs bring into court here, (and which is duly certified by the clerk of said court, the original of which they cannot produce, because the same remains of record among the records of said court, in the office of the clerk of said court,) the date whereof is the same day and year aforesaid, wherein and whereby the said William B. A. Ramsey, Robert Craighead, James P. N. Craighead, Thomas W. Humes, and the said Andrew McMillan, acknowledged themselves held and firmly bound unto Newton Cannon, governor in and over the State of Tennessee, and his successors in office, in the sum of ten thousand dollars; to which payment, well and truly to be made, they bound themselves, and each of their executors, administrators, and assigns, jointly and severally, firmly by said bond or writing obligatory, signed with their names and sealed with their seals; and which said bond or writing obligatory was and is subject to a certain condition thereunder written, whereby it was provided to the effect following, that whereas the said William B. A. Ramsey had been that day appointed clerk and master of the chancery court for the sixth chancery district of the eastern division of Tennessee for a period of six years; and if the said William B. A. Ramsey should truly and honestly keep the records of said court, and discharge the duties of said office according to law, then the said bond was to be void and of no effect, otherwise to remain in full force and virtue, as by the said bond or writing obligatory, and the condition thereof, reference being thereunto had, will more fully and at large appear.

And the said plaintiffs in fact say, that the said William B. A. Ramsey did not truly and honestly discharge the duties of said office according to law, but failed and neglected so to do, in this, that on the 17th day of February, 1840, the firm of Bevins, Earle & Co., which was composed of the said William C. Bevins, Oliver P. Earle, and Hiram Earle, now deceased, filed their bill in equity in the honorable the chancery court for the sixth chancery district of the eastern division of Tennessee, holden at Knoxville, against Jacob P. Chase and M. J. K. Bowen, merchants and partners trading under the firm of Chase & Bowen; and in said suit, and under the relief prayed for in said bill, the said Bevins, Earle & Co. had certain goods, wares, and merchandise attached, and which goods, wares, and merchandise were put into the possession of the said William B. A. Ramsey, clerk and master of said

court, as a receiver: and whereas, by an order of said court, made in said cause, the injunction granted in said cause was dissolved, and the said William B. A. Ramsey, the receiver, was directed to surrender the goods in his possession to the said Chase and Bowen, the respondents, upon their entering into bond and security to abide by and perform the judgment and decree of the court upon the final hearing of the cause, if made against them. And the said plaintiffs aver, that under and by virtue of said order, and by the law of the land, it was and became the duty of the said William B. A. Ramsey, as clerk and master of said court, to take from the said Chase and Bowen, the respondents in said cause, their bond, with good and sufficient sureties thereto, to abide by, and perform the judgment and decree of said court, upon the final hearing of said cause, if made against them. Nevertheless, the said William B. A. Ramsey, as clerk and master of said court, did not take from the said Chase and Bowen their bond, with sufficient sureties thereto, according to the order of said court; but, on the contrary, he, the said William B. A. Ramsey, on the 11th day of April, 1840, at, to wit, in the district aforesaid, took from the said Jacob P. Chase his bond, with the names of Richard Thornburgh, Hamilton Neil, Evan Lewis, Sterling Bates, Joseph Bates, and Benjamin Bradshaw, as sureties thereto, who were then wholly insufficient for the performance of the judgment and decree of said court; and upon said insufficient bond and security the said William B. A. Ramsey, then and there surrendered up to the said Chase and Bowen the said goods in his possession as aforesaid. And afterwards, at the October term, 1841, of said chancery court, a final decree was made by said court in said cause in favor of the said Bevins, Earle & Co., against said Chase & Bowen, for the sum of six thousand three hundred and three dollars and sixty-four cents, with interest from the 4th day of October, 1841, until paid; which said sum of $6,303 64 cents, so decreed to the said Bevins, Earle & Co. against the said Chase & Bowen, with the interest thereon from the 4th day of October, 1841, still remains due and unpaid. And the said plaintiffs aver, that at the time the said William B. A. Ramsey took and received said bond, with the said securities thereto, that the said Richard Thornburgh, Hamilton Neil, Evan Lewis, Sterling Bates, Joseph Bates, and Benjamin Bradshaw, were then insufficient securities for the performance of said decree; and which said decree has not as yet been performed by the said Chase and Bowen, and the said sum of $6,303 64 cents, in said decree specified, with the interest thereon from the 4th day of October, 1841, yet remains due and unpaid to said plaintiffs, as surviving partners as aforesaid. And the said plaintiffs, for assigning a further breach of the said condition of said bond, or writing obligatory, according to the form of the statute in such cases made and provided, further says, that the said firm of Bevins, Earle & Co., on, to wit, the 17th day of February, 1840, filed their bill in equity in the court of chancery for the sixth chancery district of the eastern division of Tennessee, holden at Knoxville, against Jacob P. Chase and M. J. K. Bowen, partners, trading under the firm of Chase and Bowen, and under the relief prayed

for in said bill, had certain goods, wares, and merchandise, attached, which were put into the possession of the said William B. A. Ramsey, clerk and master as aforesaid, as receiver; and by an order of said court in said cause, the injunction granted in said cause was dissolved, and the said William B. A. Ramsey, the receiver, was directed to surrender the goods in his possession, upon the respondents, the said Chase & Bowen, entering into bond and security to abide by, and perform, the judgment and decree of the court upon the final hearing of the cause, if made against them. And the plaintiffs aver, that under and by virtue of said order, and by the law of the land, it was and became the duty of the said William B. A. Ramsey, as clerk and master of said court, before surrendering said goods to the said Chase & Bowen, to take from the said Chase & Bowen, a bond, with sufficient security thereto, that they, the said Chase & Bowen, would abide by, and perform, the judgment and decree of said court upon the final hearing of said cause, if made against them. Yet the said William B. A. Ramsey, clerk and master as aforesaid, did not take from the said Chase & Bowen bond, with sufficient security, that they would abide by, and perform, the judgment and decree of said court upon the final hearing of said cause; but, on the contrary, wholly failed and neglected so to do, and then and there surrendered up to the said Chase and Bowen said goods without taking a bond with sufficient security thereto, to abide by, and perform, the judgment and decree of said court on the final hearing of said cause. And afterwards, at the October term, 1841, of said court, on the final hearing of said cause, a judgment and decree was made and rendered in said cause by said court in favor of the said Bevins, Earle & Co., against the said Chase & Bowen, for the sum of $6,303 64 cents, with interest thereon from the 4th day of October, 1841, until paid, which said decree the said Chase & Bowen has not performed by paying to the said Bevins, Earle & Co. said sum of $6,303 64 cents, so decreed to them, with interest from the 4th day of October, 1841, but the same still remains due and unpaid to the said plaintiffs, as surviving partners of the said firm of Bevins, Earle & Co. And the said plaintiffs, for assigning a further breach of the said condition of said bond, or writing obligatory, according to the form of the statute in such case made and provided, further say that the said Bevins, Earle & Co., on, to wit, the 17th day of February, 1840, filed their bill in equity in the court of chancery for the sixth chancery district of the eastern division of Tennessee, holden at Knoxville, against Jacob P. Chase and M. J. K. Bowen, partners, trading under the firm of Chase and Bowen, and under the relief prayed for in said bill, certain goods, wares, and merchandise were attached and put into the possession of the said William B. A. Ramsey, clerk and master of said court, as a receiver; and afterwards, by an order of said court, made in said cause, the injunction granted in said cause was dissolved, and the said William B. A. Ramsey, the receiver, was directed to surrender said goods in his possession to the said Chase & Bowen, the respondents, upon them, the said Chase & Bowen, entering into bond and security to abide by and

perform the judgment and decree of the court upon the final hearing of the cause, if made against them. And the plaintiffs aver, that under, and by virtue of, such order, and the law of the land, it was the duty of the said William B. A. Ramsey, as clerk and master of said court, to take from the said Chase & Bowen bond and security that they would abide by and perform the judgment and decree of said court in said cause upon the final hearing, if made against them, before surrendering to the said Chase & Bowen the goods then in his possession as aforesaid; yet the said William B. A. Ramsey did not, as clerk and master of said court, take from the said Chase & Bowen bond and security that they would abide by and perform the judgment and decree of said court in said cause upon the final hearing, if made against them, as was his duty as clerk and master as aforesaid to have done; but surrendered to the said Chase and Bowen the goods then in his possession as receiver, without taking bond and security from the said Chase & Bowen to abide by and perform the judgment and decree of said court upon the final hearing of said cause, if made against them.

And afterwards, at the October term, 1841, of said court, a judgment and decree was made by said court upon the final hearing of said cause, in favor of the said Bevins, Earle & Co., and against the said Chase & Bowen, for the sum of $6,303 64 cents, with interest from the 4th day of October, 1841, until paid, which said sum of $6,303 64 cents, so decreed to the said Bevins, Earle & Co. against the said Chase & Bowen, with the interest from the 4th day of October, 1841, yet remains unpaid to the said Bevins, Earle & Co., or to the said plaintiffs as surviving partners as aforesaid, and the said decree is wholly unperformed by the said Chase & Bowen in any part thereof. And the said plaintiffs for assigning a further breach of the said condition of said bond or writing obligatory, according to the form of the statute in such case made and provided, further say, that the said Bevins, Earle & Co., on, to wit, the 17th day of February, 1840, filed their bill in equity in the court of chancery, for the sixth chancery district of the eastern divison of Tennessee, holden at Knoxville, against Jacob P. Chase and M. J. K. Bowen, and under the relief prayed for in said bill had certain goods, wares, and merchandise attached, which were put into the possession of the said William B. A. Ramsey, clerk and master of said court, as receiver; and afterwards, by an order of said court, made in said cause, the injunction granted in said cause was dissolved, and the said William B. A. Ramsey, the receiver, was directed to surrender the goods in his possession to the said Chase & Bowen, the respondents, upon their entering into bond and security to abide and perform the judgment and decree of the court upon the final hearing of said cause, if made against them. And the plaintiffs aver, that under and by virtue of said order of the court and the law of the land, it was and became the duty of the said William B. A. Ramsey, as clerk and master of said court, to take from the said Chase & Bowen bond and sufficient security that the said Chase & Bowen would abide by and perform the judgment and decree of the said *cause*, upon the final hearing of said cause, if

made against them. Yet the said William B. A. Ramsey, clerk and master as aforesaid, wholly failed and neglected to take from the said Chase & Bowen bond with sufficient security that they would abide by and perform the judgment and decree of said court on the final hearing of said cause, if made against them, as was his duty to have done; but surrendered up to the said Chase & Bowen the goods in his possession, without taking bond and security from them as directed and required by the order of said court. And afterwards, at the October term of said court, in the year 1841, on the final hearing of said cause, a judgment and decree was rendered in said cause in favor of the said Bevins, Earle & Co., and against the said Chase & Bowen, for the sum of $6,303 64 cents, with interest from the 4th day of October, 1841, until paid, which said decree the said Chase & Bowen has wholly failed to abide by and perform, and the said money so decreed *to said* the said Bevins, Earl & Co., yet remains due and unpaid to said plaintiffs as surviving partners as aforesaid.

By reason of the premises and of said breaches, the said bond or writing obligatory became and is forfeited, and the said Aaron V. Brown, governor as aforesaid, and the successor of James C. Jones, late governor, who was successor of James K. Polk, who was successor of Newton Cannon, who was governor as aforesaid, after the breaches aforesaid of the condition of said bond or writing obligatory, and after the same had become and was forfeited, to wit, on the 22d day of July, 1847, at, to wit, in the district aforesaid, by his written assignment, according to the form of the statute in such case made and provided, on a certified copy of said bond assigned said bond to the said plaintiffs, his own proper signature being to such written assignment subscribed, which said written assignment so as aforesaid made by the said Aaron V. Brown, governor as aforesaid, is here by the plaintiffs produced to, and shown to, the court, of which said written assignment the said defendants afterwards, to wit, on the same day and year aforesaid, at, to wit, in the district aforesaid, had notice. By reason of the premises, and by virtue of which said written assignment so as aforesaid made, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiffs to ask, demand, sue for, and recover, of and from the said defendants, the said sum of ten thousand dollars, according to the tenor and effect, true intent and meaning of said bond, and of said assignment so thereof made as aforesaid to the said plaintiffs. Yet the said defendants have not, nor has either of them as yet, paid to said plaintiffs the said sum of ten thousand dollars, or any part thereof, although said defendants have often thereunto been requested. But to pay the same the said defendants have hitherto wholly neglected, failed, and refused, and still do neglect, fail, and refuse, so to do, to the damage of the plaintiffs twenty thousand dollars, and therefore they sue.

ROB'T H. HYNDS, *Att'y.*

The following is a copy of the clerk's bond and assignment thereon, referred to in the declaration:

Know all men by these presents, that we, William B. A. Ramsey, Robert Craighead, James P. N. Craighead, Thomas W. Humes, and Andrew McMillan, are held and firmly bound unto Newton Cannon, Governor in and over the State of Tennessee, and his successors in office, in the sum of ten thousand dollars; to which payment, well and truly to be made, we bind ourselves, and each of our executors, administrators, and assigns, jointly and severally, firmly by these presents. Signed with our names and sealed with our seals this 11th day of April, 1836.

The condition of the above obligation is such, that whereas the above bound William B. A. Ramsey has been this day appointed clerk and master of the chancery court, for the sixth chancery district of the eastern division of Tennessee, for a period of six years; now, if the said Wm. B. A. Ramsey shall truly and honestly keep the records of said court, and discharge the duties of said office according to law, then the above bond is to be void and of no effect, otherwise to remain in full force and virtue.

Witness our hands and seals, this 11th day of April, 1836.

W. B. A. RAMSEY, [SEAL.]
ROBT. CRAIGHEAD, [SEAL.]
J. P. N. CRAIGHEAD, [SEAL.]
THOMAS W. HUMES, [SEAL.]
AND. McMILLAN. [SEAL.]

Acknowledged in open court, before me, this 11th April, 1836.

THOS. L. WILLIAMS.

STATE OF TENNESSEE:

I, William B. A. Ramsey, clerk and master of the chancery court at Knoxville, in the sixth chancery district of the eastern division of Tennessee, do hereby certify the foregoing to be a full, true, and perfect copy of a bond as the same appears upon the records of my office.

In testimony whereof I have hereunto set my hand and private [SEAL.] seal, having no seal of office, at office, in Knoxville, this 18th day of June, 1847.

W. B. A. RAMSEY, *C. and M.*

EXECUTIVE OFFICE, *July* 22, 1847.

I, Aaron V. Brown, governor of the State of Tennessee, successor of James C. Jones, late governor, who was successor of James K. Polk, who was successor of Newton Cannon, do hereby assign the bond, of which the within is a copy, to William C. Bevins and Oliver P. Earle, surviving partners of the firm of Bevins, Earle & Co., to be sued upon as the law directs.

Witness my hand.

AARON V. BROWN,
Governor of the State of Tennessee.

And at the July rules, 1848, of said court, the following pleas were filed in said cause, viz:

Circuit court of the United States, for the eighth judicial circuit, July rules, 1848.

WILLIAM C. BEVINS AND OLIVER P. EARLE, surviving partners of the late firm of Bevins, Earle & Co., assignees, &c., who sue for the use of Oliver P. Earle,
vs.
WILLIAM B. A. RAMSEY, Robert Craighead, James P. N. Craighead, Thomas W. Humes, and James McMillan, adm'r of Andrew McMillan, dec'd.

1. And the said defendants, by attorney, come and defend, when, &c., and for plea say, that the said plaintiffs their action aforesaid against them ought not to have and maintain, because they say that they have well and truly kept and performed the conditions of the bond or writing obligatory in the plaintiffs' declaration mentioned; and of this they put themselves upon the country.

SNEED, *Atto. for def'ts.*

And the plaintiffs also. HYNDS.

2. And for further plea in this behalf, the defendants say, leave of the court being first had, actio non, because they say that it was no part of the duty or right of said William B. A. Ramsey, as clerk and master of said chancery court holden at Knoxville, for the sixth chancery district of the eastern division of Tennessee, to take the bond of said Chase and Bowen with good and sufficient surety or otherwise, or to surrender the property attached in said cause, and the right and duty to take said bond and to surrender the property which had been attached, and was in the hands of said receiver, was in no wise connected with the office of clerk and master of said court, either by law or by the orders of said court of chancery made in said cause; but the same exclusively, by law and the orders of said court, appertained and belonged to the receiver in said cause; and this the defendants are ready to verify; wherefore, &c.

SNEED, *Atto. for def'ts.*

3. And for further plea in this behalf, leave of the court being first had, the defendants say actio non, because they say that the filing said bill of complaint in the said court of chancery at Knoxville, for the sixth chancery district of Tennessee, by said Bevins, Earle & Co., against said Chase and Bowen, the attaching said property in said suit, the appointing a receiver therein, the order made therein requiring said Chase and Bowen to execute a bond, with good and sufficient sureties, to abide by and perform the decree of the court in said cause, if made

against them, the said Chase and Bowen, and the final decree made in said cause by which the said Bevins, Earle & Co. recovered the large sum of money mentioned in the plaintiffs' declaration of the said Chase and Bowen, were each and all illegal and void acts, the said court of chancery having no jurisdiction of the subject matter of said cause, but the same belonged exclusively to a court of law; and this the defendants are ready to verify; wherefore, &c.

SNEED, *Atto. for def'ts.*

4. And for further plea in this behalf the defendants say, leave of the court being first had, actio non, because they say that after the making said fiat and order by said chancery court at Knoxville for the surrender of said property attached in said cause, upon said Chase and Bowen executing bond, with good and sufficient surety, to abide by and perform the decree of the court in said cause, if made against them, *to* said Chase and Bowen; which said fiat and decree is in the following words and figures:

"STATE OF TENNESSEE:

"To the clerk and master of the chancery court for the eastern division, held at Knoxville, for the sixth chancery district.

"Let a writ of injunction and other process, as prayed for in the foregoing bill, issue, on the complainants giving bond, and as prescribed by law and the rules of the court; and the clerk and master is hereby appointed receiver.

"Given under my hand, this 17th day of February, 1840.

"CHARLES F. KEITH,
One of the judges of the circuit court of law in the State of Tennessee."

BEVINS, EARLE & Co., }
vs.
CHASE & BOWEN. }

"In this cause the injunction is dissolved, and the receiver appointed by the judge granting the injunction is directed to surrender the goods in his possession, upon the respondents entering into bond and security, to abide by and perform the judgment and decree of the court upon the final hearing of the cause, if made against them."

And before said property so attached was surrendered to said Chase & Bowen, the said William B. A. Ramsey did take from the said Chase his bond, with sureties in the penal sum of ten thousand dollars, payable to said Bevins, Earle & Co., or to any member of said firm, conditioned as in and by said order was directed; which said bond is in the following words and figures:

Know all men by these presents, that we, Jacob P. Chase, M. J. K. Bowen, Richard Thornburg, Hamilton Neil, Evan Lewis, L. Bates, Joseph Bates, and Benjamin Bradshaw, are held and firmly bound unto Bevins, Earle & Co., or any member of said firm, in the penal sum

of ten thousand dollars, well and truly to be made and levied of our respective goods and chattels, lands and tenements; and to the payment of which we bind ourselves, jointly and severally, our heirs, executors, and administrators.

The condition of the above obligation is such, that whereas, the above bound Jacob P. Chase and M. J. K. Bowen, under the style of Chase & Bowen, have been sued by the said Bevins, Earle & Co., in the chancery court at Knoxville, and in said suit have had certain goods, wares and merchandise attached, and put in the possession of the clerk and master of said court as a receiver; and whereas, by an order of said court, the said Chase & Bowen are permitted to replevy said goods and merchandise: Now, if the said Chase & Bowen shall well and truly abide by and perform the judgment and decree of said court, made at the final hearing of said cause in said court, if made against them, then is the above obligation to be void, otherwise to remain in full force and virtue. In testimony whereof we have hereunto set our hands and seals this 11th day of April, 1840.

JACOB P. CHASE, [SEAL.]
RICHARD THORNBURG, [SEAL.]
HAMILTON NEIL, [SEAL.]
EVAN LEWIS, [SEAL.]
L. BATES, [SEAL.]
JOSEPH BATES, [SEAL.]
BENJ. BRADSHAW. [SEAL.]

Witness—
JOHN CHASE,
WILLIAM CHASE.

Which said bond, after the final determination of said cause of Bevins, Earle & Co., in said chancery court at Knoxville, which decision was final, was, on the application of said Bevins, Earle & Co., by said court, ordered to be surrendered up to said Bevins, Earle & Co., by the clerk and master of said court, and which bond was then, to wit, on the 16th day of October, 1841, surrendered up to said Bevins, Earle & Co., and was accepted by them, and under and by virtue of said bond, said Bevins, Earle & Co. have demanded, brought suit against, and received of the sureties in said bond, who were in no otherwise responsible or liable to said Bevins, Earle & Co., than by said bond, large sums of money, to wit, two thousand dollars, part and parcel of the penalty and condition of said bond, and which were demanded and received on and in discharge of said bond. And this the defendants are ready to verify. Wherefore, &c.

SNEED, *Atto. for Defts.*

5. And for further plea in this behalf, leave of the court first being had and obtained, the defts. say actio non, because they say that the said William B. A. Ramsey, Robert Craighead, James P. N. Craighead, and Thomas W. Humes, do not owe the debt in the plaintiffs' declaration mentioned, and they, together with the said James McMil-

lan, administrator of Andrew McMillan, deceased, do not detain the same, as the plaintiffs in declaring against them have alleged, and of this they put themselves upon the country.

SNEED, *Atto. for Defts.*

6. And for further plea in this behalf, leave of the court being first had, the defendants say actio non, because they say that before the surrender of the said property, which had been attached as stated in plaintiffs' declaration, and was in the hands of said William B. A. Ramsey as receiver, as stated in plaintiffs' declaration, he, the said William B. A. Ramsey, did require of said Chase & Bowen, and did take a bond with sureties, conditioned as in and by the decree of the court in said cause, and by law, the same was directed to be conditioned; and which bond was in the penal sum of ten thousand dollars, and which said bond was signed, and sealed, and delivered by said Chase and sureties. And defendants aver, that in requiring, taking, drafting, judging of as to sufficiency of the sureties and conditions, and also as to its conformity with the order in said cause and the law, and the accepting said bond, and the surrender of said property attached after the execution and delivery of said bond, he, the said William B. A. Ramsey, acted *bona fide* in the exercise of his best judgment. And this defendants are ready to verify. Wherefore, &c.

SNEED, *Atto. for Defts.*

7. And for further plea in this behalf, leave of the court being first had and obtained, the defendants say *actio non*, because they say that at the time of the execution of the bond by these defendants and the said Andrew McMillan, deceased, they, these defendants and said Andrew McMillan, deceased, were all citizens and residents of the State of Tennessee, and they, these defendants, have continued such residents and citizens of Tennessee up to this time; and the said Andrew McMillan, deceased, continued such citizen and resident of Tennessee until his death; and the defendants further say, that at the time of the execution of said bond by defendants, and Andrew McMillan, deceased, to Newton Cannon, governor of the State of Tennessee, and his successors in office, he, the said Newton Cannon, as well as James K. Polk, James C. Jones, and Aaron V. Brown, who were the successors in office of said Newton Cannon, were all citizens and residents of the State of Tennessee, and each of said persons, to wit, Newton Cannon, James K. Polk, James C. Jones, and Aaron V. Brown, continued to reside, while in office as governor, and during such official existence, they respectively continued citizens and residents of the State of Tennessee; and the said Aaron V. Brown, at the time of the commencement of this suit, was governor of, and a citizen of, and residing in the State of Tennessee. And this the defendant is ready to verify. Wherefore, &c.

SNEED, *Attorney for defendants.*

8. And for further plea in this behalf, the leave of the court being first had and obtained, the defendants say actio non, because they say,

that at the time said supposed cause of action arose the said plaintiffs, and the defendants, as well as the said Andrew McMillan, dec'd, were citizens and residents of the State of Tennessee; and this the defendants are ready to verify. Wherefore, &c.

SNEED, *Attorney for defendants.*

Circuit court of the United States, for the eighth judicial circuit.

BEVINS & EARL, assignees,
vs.
WM. B. A. RAMSEY.

July rules, 1848.

James McMillan, administrator of the estate of Andrew McMillan, deceased, by att'y, comes, and for a further plea in this behalf says, that the plaintiffs their action against aforesaid ought not to have and maintain, because he says that more than three years had elapsed after the qualification of this defendant as administrator of the estate of the said Andrew McMillan, dec'd, before the commencement of this suit; and this he is ready to verify; wherefore, he prays judgment, and

RODGERS & BOYD,
Att'ys for McMillan.

And for further plea in this behalf, said James McMillan, administrator as aforesaid, says actio non, because he says that he hath fully administered all and singular the goods and chattels which were of the said Andrew McMillan, dec'd, at the time of his death, and which have ever come to the hands of him, the said James McMillan, as administrator as aforesaid, to be administered, at, to wit, and aforesaid; and that he, the said James McMillan, hath not, nor on the day of commencement of this suit, or at any time since, had any goods or chattels which were of the said Andrew McMillan, dec'd, at the time of his death in the hands of him, the said James McMillan, administrator aforesaid, to be administered; and this he is ready to verify. Wherefore, &c.

RODGERS & BOYD,
Att'ys for McMillan.

WILLIAM C. BEVINS and O. P. Earle, assignees, &c., for the use of O. P. Earle,
vs.
WILLIAM B. A. RAMSEY and others.

And the said plaintiffs, for replication to the second plea of the said defendants say, that they, by reason of any thing by said defendants in that plea alleged, ought not to be barred from having and maintaining their said action against said defendants, because they say that it was the duty and right of the said William B. A. Ramsey, as clerk and master of said chancery court, holden at Knoxville, for the sixth chancery district of the eastern division of Tennessee, to take the bond of the said Chase & Bowen, with good and sufficient surety thereto,

under the order of said court; and this the said plaintiffs pray may be inquired of by the country.

HYNDS, *Att'y.*

And the defendants doth the like.

SNEED, *Att'y.*

And the said plaintiffs say, that they, by reason of any thing by the said defendants in their third, fourth, fifth, seventh, and eighth pleas alleged, ought not to be barred from having and maintaining their said action against said defendants, because they say that said third, fourth, fifth, seventh, and eighth pleas of the said defendants, and the matters and things in said pleas contained, as the same are therein pleaded and set forth, are not good and sufficient in law to bar said plaintiffs from having and maintaining their said action against said defendants, and that they, said plaintiffs, are not bound by the law of the land to answer the same; and this they are ready to verify. Wherefore, they pray judgment, &c.

HYNDS, *Att'y.*

And for replication to the sixth plea of said defendants said plaintiffs say, that they, by reason of any thing by said defendants in that plea alleged, ought not to be barred from having and maintaining their said action against said defendants, because they say that the said William B. A. Ramsey, clerk and master as aforesaid, did not at any time require of, and take a bond from, the said Jacob P. Chase, and M. J. K. Bowen, with sufficient surety thereto, to abide by and perform the judgment and decree of the said court of chancery in the said cause of Bevins, Earle & Co., against said Chase & Bowen, if made against them, as was the duty of the said William B. A. Ramsey, as clerk and master of said court under the order of said court, and by law, to have done; but the said William B. A. Ramsey, clerk and master as aforesaid, wholly neglected and failed so to do. And this said plaintiffs are ready to verify.

HYNDS, *Att'y.*

And the said defendants, for rejoinder to the replication of the said plaintiffs to the sixth plea of defendants, say, that plaintiffs ought not to have and maintain their aforesaid action against them by reason of any thing in said replication to the said sixth plea of defendants set forth and stated, because they say that the matters and things therein set forth and stated are not sufficient in law to entitle said plaintiffs to have and maintain the same. Wherefore, defendants demur and pray judgment.

SNEED, *Att'y.*

BEVINS & EARLE, assignees, for the use of O. P. Earle,
vs.
W. B. A. RAMSEY and others.

And for further replication to the plea of the said James McMillan, administrator, &c., by him first pleaded, said plaintiffs say, that *that*

they, by reason of any thing by said defendant in that plea alleged, ought not to be debarred from having and maintaining his said action against said defendant, as administrator as aforesaid, because they say that the said supposed cause of action accrued to them within three years next before the commencement of this suit; and this he is ready to verify. Wherefore, he prays judgment, &c.

HYNDS, *Att'y.*

And for replication to the second plea of the said James McMillan, administrator as aforesaid, the said plaintiffs say that they, by reason of any thing by said defendant in that plea alleged, ought not to be barred from having and maintaining their said action against said defendant as administrator as aforesaid, because they say that said defendant has not fully administered all and singular the goods and chattels which were of the said Andrew McMillan at the time of his death, and which came to the hands of the said defendant to be administered; but on the day of the commencement of this suit the said defendant, as administrator as aforesaid, had goods and chattels which were of the said Andrew McMillan at the time of his death, in the hands of the said defendant, as administrator as aforesaid, to be administered, of great value, to wit, of the value of the debt in the declaration mentioned; and this said plaintiffs pray may be inquired of by the country.

HYNDS, *Att'y.*

And defendant doth the like.

RODGERS & BOYD, *Atto's.*

And for rejoinder to the replication of the said plaintiffs to the first separate plea of James McMillan, administrator as aforesaid, by him above pleaded, he, the said James McMillan, administrator as aforesaid, says, actio non, because he says the said plaintiffs' supposed cause of action did not accrue to them within three years next before the commencement of this suit; and of this he puts himself upon the country.

RODGERS & BOYD, *Atto's.*

And afterwards, to wit, at the October term, 1848, of the United States court, held for the circuit and district aforesaid, at Knoxville, the following proceedings were had in said cause, viz:

Wednesday, 18*th October*, 1848.

BEVINS, EARLE & Co., assignees, &c., who sue for the use of O. P. Earle,
vs.
WILLIAM B. A. RAMSEY, Robert Craighead, J. P. N. Craighead, Thomas W. Humes, and James McMillan, administrator of Andrew McMillan, deceased.

In this cause the demurrer of the plaintiff to the third, fourth, fifth, seventh, and eighth pleas of the defendants by them jointly pleaded, and

the demurrer of defendants to the replication of the plaintiffs to the sixth plea of defendants came on for argument; and after argument, as well by the attorneys of defendants as of the plaintiff, and the matter of the pleadings in the cause being fully understood by the court, it is considered by the court that said demurrer be sustained to the declaration, and that the demurrer of the plaintiff to said pleas of defendants be overruled, and that defendants' demurrer to the replication of plaintiffs to the sixth plea of defendant be sustained. Whereupon the court offered to the plaintiff to plead over and amend his declaration and all other pleadings, but the attorney of plaintiff declined availing himself of such offer, and announced that he declined to plead over or further. Whereupon it is considered by the court that said suit be dismissed, and the defendants go hence without day, and recover of the plaintiffs the costs by them in this behalf expended, and that execution issue.

And on the following day of said term, the following entry appears of record in said cause, viz:

Thursday, 19*th October*, 1848.

BEVINS & EARLE, assignees, and who sue for O. P. Earle,
vs.
WILLIAM B. A. RAMSEY and others.

In this case plaintiffs pray an appeal in error from the judgment of this court to the next term of the Supreme Court of the United States, to be held at the city of Washington, on the first Monday of December next, which is granted, bond and security for the prosecution of said appeal being given.

Appeal bond.

Know all men by these presents that we, O. P. Earle, M. B. Earle, and Robert H. Hynds are held and firmly bound to pay to William B. A. Ramsey, Thomas W. Humes, Robert Craighead, J. P. N. Craighead, and James McMillan, their heirs and assigns, executors and administrators, the penal sum of two hundred and fifty dollars.

Witness our hands and seals, this 19th day of October, 1848.

The condition of the above obligation is such, that whereas the above bound O. P. Earle has this day prayed for and obtained an appeal to the next term of the Supreme Court of the United States, to be held at Washington city on the first Monday of December next, from a judgment this day rendered against them in the circuit court of the United States, for the eighth judicial circuit, in the district of East Tennessee, in favor of William B. A. Ramsey and others. Now, should the said O. P. Earle prosecute said writ with effect, or in case of failure well and truly pay all such costs as may be awarded by said Supreme Court